

## **FIRST AMENDMENT TO EMPLOYMENT AGREEMENT**

This First Amendment to Employment Agreement (the "Amendment") is made between the City of Arcadia ("City") and Dominic Lazzaretto ("Manager"), parties to the Employment Agreement dated March 26, 2012 (the "Agreement").

### **RECITALS**

- A. City and Manager have met to perform the annual performance evaluation referenced in Section 6 of the Agreement and wish to amend certain terms and conditions of the Agreement.
- B. Section 6(c) of the Agreement provides for adjustments in Base Salary and/or benefits of Manager upon completion of the annual performance evaluation.
- C. City and Manager wish to extend the term of the Agreement and provide for Base Salary adjustments similar to those provided to all City employees during the recent labor negotiations process. Such extensions and adjustments are to the mutual benefit of City and Manager.

### **AMENDMENTS**

In consideration of the mutual promises, covenants, guaranties, and conditions contained herein and for other good and valuable consideration, the City and Manager agree to the terms and conditions set forth in this Amendment.

1. Section 3 (Base Salary) of the Agreement is amended to read in full as follows:

"Commencing on the Effective Date of this Agreement, City agrees to pay Manager an annual Base Salary, exclusive of benefits, in the sum of One Hundred Ninety-Nine Thousand Six Hundred Fifty Dollars (\$199,650) per year, or Seven Thousand Six Hundred Seventy Eight Dollars and Eighty Five Cents (\$7,678.85) per pay period, gross, payable in installments at the same time and by the same methods as other City employees are regularly paid. Commencing on July 1, 2013, City agrees to increase Manager's Base Salary in the amount of One Point Two Eight Three Percent (1.283%). Commencing on April 1, 2014, City agrees to pay Manager an annual Base Salary in the sum of Two Hundred Eight Thousand Three Hundred Eighty-Eight Dollars (\$208,388) per year, or Eight Thousand Fourteen Dollars and Ninety-Two Cents (\$8,014.92) per pay period. Manager shall receive an increase in Base Salary in the amount of Two Percent (2.00%) effective July 1, 2015, and on July 1, 2016, and in the amount of Two and One-Half Percent (2.50%) effective July 1, 2017. Said Base Salary increases shall be apart from any Base Salary increases provided on the basis of

merit as approved by the Council, in its sole discretion, during the term of this Agreement. Nothing set forth herein shall prohibit the Council from reducing the Base Salary of Manager due to budgetary or similar constraints, on condition that any such reduction shall not exceed the average reduction applicable to all Executive Management employees of the City at the time of reduction in Manager's Base Salary. Furthermore, Manager, in his sole discretion, may elect not to receive any Base Salary increase provided hereunder; provided, however, if Manager elects not to receive a Base Salary increase provided hereunder, said Base Salary increase shall be subsequently implemented, on a prospective basis only, upon written request of Manager."

2. The first paragraph of Section 4(f) (Supplemental Benefits) of the Agreement is amended to read in full as follows:

"Except as provided otherwise herein, Manager shall receive any and all other supplemental benefits including, but not limited to, vacation, sick leave, administrative leave, holiday pay, health, dental, life insurance, disability insurance, retirement benefits (PERS), physical examination, and tuition reimbursement, as are generally available to Non-Safety Executive Management employees of the City as provided by applicable City Resolutions and Personnel Rules. Except as otherwise provided herein, all actions undertaken by City relating to supplemental benefits for Non-Safety Executive Management Employees of the City shall be considered actions affecting the same benefits applicable to Manager. "

3. Section 11 (Effective Date and Term) is amended to read in full as follows:

"The Effective Date of this Agreement shall be March 26, 2012. Subject to City's right to terminate Manager's employment at any time, the Term of this Agreement is six (6) years from the Effective Date, and shall automatically renew itself for successive twelve (12) month periods unless City notifies Manager of its intent to terminate this Agreement at least twelve (12) months prior to the end of its six (6) year Term or any successive twelve (12) month Term."

4. Upon the effective date of this Amendment, Manager shall receive a one-time cash payment of Two Thousand Ninety Dollars (\$2,090) in lieu of providing Manager with a retroactive Base Salary adjustment equal to that amount previously received by all other City employees on July 1, 2013. Such one-time payment shall be subject to taxation and reported similar to any other Salary payments received by Manager.
5. Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this Amendment and the Agreement, the terms of this Amendment will prevail.



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first set forth hereinabove.

**CITY:**

**CITY MANAGER:**

\_\_\_\_\_  
Mayor of the City of Arcadia

\_\_\_\_\_  
Dominic Lazzaretto

**ATTEST:**

\_\_\_\_\_  
City Clerk  
City of Arcadia

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Stephen P. Deitsch  
City Attorney

## **EMPLOYMENT AGREEMENT**

This Agreement between the City of Arcadia ("City") and Dominic Lazzaretto ("Manager") is made this 26<sup>th</sup> day of March, 2012 ("Effective Date").

### **RECITALS**

A. City desires to employ Dominic Lazzaretto as the City Manager of the City of Arcadia as provided by the Arcadia City Charter Section 600 et seq. and the terms and conditions set out herein.

B. Manager desires to serve as City Manager of the City of Arcadia on the terms and conditions set out herein.

### **AGREEMENT**

NOW, THEREFORE, the parties agree as follows on the terms and conditions of Manager's employment.

#### **1. DUTIES**

City hereby employs Manager, and Manager hereby accepts employment, as City Manager of the City. Manager shall perform the functions and duties specified for the City Manager of the City in the Arcadia City Charter Section 601 and other ordinances, resolutions and policies of the City and shall perform such other legally permissible and proper duties and functions as the City Council of the City (the "Council") may from time to time assign, consistent with the Arcadia City Charter and other applicable law. Manager agrees to perform all such functions and duties to the best of his ability and in a lawful, efficient and competent manner. Pursuant to Arcadia City Charter Section 600, Manager shall at all times serve at the will and pleasure of the Council ("at will" employment status).

#### **2. SEVERANCE AND SEVERANCE PAY AND BENEFITS**

(a) In the event that Manager is involuntarily terminated without cause by the Council, City agrees, subject to the following conditions, to pay Manager within fifteen (15) days of the later to occur of (i) the date of termination of employment or (ii) the date of final determination by the Council of the matters subject to a hearing as set forth in this paragraph, a lump sum cash payment ("Severance Pay") equal to nine (9) months of the Base Salary Manager is receiving on the date of the Council's action to terminate Manager, less legally required or authorized deductions. City shall also continue the health benefits being provided to Manager at the time of termination until the expiration of the period of Severance Pay or until Manager finds other employment, whichever occurs first ("Severance Benefits"). However, in the event Manager is terminated with cause due to the reasonable determination of the Council that Manager

has committed either (i) any illegal act involving personal gain to Manager, (ii) gross negligence or (iii) malfeasance, then, and in that event, City shall have no obligation to pay the Severance Pay and Severance Benefits. In the event that Manager disputes the Council's determination of cause and the denial of Severance Pay and Severance Benefits, Manager may submit the dispute to binding arbitration. A written arbitration claim must be submitted to the City Clerk within ten (10) days of the date that the Council notifies Manager of his termination for cause under this Section, otherwise Manager's right to contest the denial of Severance Pay and Severance Benefits is waived. Said arbitration shall be conducted under the Expedited Labor Arbitration Procedures of the American Arbitration Association. City shall bear the cost of the arbitrator and related administrative expenses charged by the American Arbitration Association and each party shall be responsible for its own attorneys' fees and other costs. The sole issue before the Arbitrator shall be whether Manager's termination was for cause as defined in this Agreement. If the arbitrator affirmatively determines that Manager's termination was for cause as defined in this Agreement, Manager shall not be entitled to payment of Severance Pay and Severance Benefits. If the arbitrator determines that Manager's termination was without cause as defined in this Agreement, Manager shall be entitled to the Severance Pay and Benefits as if terminated without cause under this Agreement. Manager agrees that this arbitration provision shall be his sole and exclusive remedy upon termination of his employment and City and Manager agree that the arbitrator's decision shall be final and binding and not be subject to judicial review. Payment of Severance Pay and Severance Benefits shall be conditioned upon Manager executing a general release and waiver of any and all claims against City, its officers, employees and agents, in such form as may reasonably be required by City. Severance Pay and Severance Benefits shall not be payable unless and until Manager executes such general release and waiver of any and all claims against City, its officers, employees and agents, and until expiration of all consideration and revocation rights as provided by law at the time of termination of Manager's employment and this Agreement.

(b) In the event Manager resigns his employment as Manager, then Manager shall give City at least six (6) weeks notice of resignation in writing in advance of the date of resignation, unless mutually agreed upon otherwise. If Manager resigns or retires voluntarily, then City shall have no obligation to pay Severance Pay and Severance Benefits to Manager.

(c) Manager agrees that in the event Manager's employment is terminated, with or without cause, under no circumstances will Manager be entitled to contest the existence or nature of Manager's "at will" employment status, nor will Manager be entitled to seek or receive the remedy of reinstatement to employment with the City in any arbitration, administrative or legal forum. Manager agrees that the sole issue for resolution upon termination of Manager's employment will be whether or not City is obligated to pay to Manager Severance Pay and Severance Benefits, as provided in Section 2.(a), above .

(d) Notwithstanding any other provision herein, in accordance with Government Code Sections 3511.2 and 53260, the Severance Pay and Severance Benefits that Employee may receive in the event of the termination of this Agreement shall not exceed an amount equal to the monthly Base Salary of Employee multiplied by the number of months left on the unexpired term of this Agreement.

(e) Pursuant to Government Code Sections 53243, 53243.1 and 53243.2, which became effective on January 1, 2012, if Manager is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if Manager is provided with administrative leave pay pending an investigation, Manager shall be required to fully reimburse City such amounts paid; (2) if City pays for the criminal legal defense of Manager (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Manager shall be required to fully reimburse City such amounts paid; and (3) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that Manager may receive from City shall be fully reimbursed to City or void if not yet paid to Manager. For purposes of this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) A crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

### **3. BASE SALARY**

Commencing on the Effective Date of this Agreement, City agrees to pay Manager an annual Base Salary, exclusive of benefits, in the sum of One Hundred Ninety-Nine Thousand Six Hundred Fifty Dollars (\$199,650) per year, or Sixteen Thousand Six Hundred Thirty Eight Dollars (\$16,638.00) per month, gross, payable in installments at the same time and by the same methods as other City employees are regularly paid. Effective the first pay period that includes July 1, 2013, Manager shall receive an increase in Base Salary in an amount equal to the lesser of Two and One Third percent (2.33%) or the increase in the cost of living based on the California Consumer Price Index for Urban Wage Earners and Clerical Workers calculated by the Department of Industrial Relations for the twelve (12) month period ending on May 31, 2013. Said Base Salary increase shall be apart from any Base Salary increases provided on the basis of merit as approved by the Council, in its sole discretion, during the term of this Agreement. Nothing set forth herein shall prohibit the Council from reducing the Base Salary of Manager due to budgetary or similar constraints, on condition that any such reduction shall not exceed the average reduction applicable to all management employees of the City at the time of reduction in Manager's Base Salary. Furthermore, Manager, in his sole discretion, may elect not to receive any Base Salary increase provided hereunder; provided, however, if Manager elects not to receive a Base Salary increase provided hereunder, said Base Salary increase shall be subsequently implemented, on a prospective basis only, upon written request of Manager.

#### **4. BENEFITS**

(a) **Vacation Leave.** Manager shall accrue vacation at the rate of 5.23 hours per two week period (or as otherwise adjusted generally for other management employees). Manager shall receive twenty (20) hours of vacation time upon commencement of employment.

(b) **Sick Leave.** Manager shall accrue sick leave at the rate for management employees as that may be adjusted from time to time. Accrued and unused sick leave shall not be subject to buy-back annually or upon termination. Manager shall also receive on commencement of employment a sick leave bank of ninety-six (96) hours which is provided to executive staff pursuant to Resolution No. 5842.

(c) **Management Leave.** Manager shall receive Eighty (80) hours of management leave annually which cannot be carried over from year to year.

(d) **Vehicle Allowance.** Manager shall be provided an automobile allowance of Three Hundred Seventy Five Dollars (\$375.00) per month. Manager shall be responsible for paying for liability, property damage and comprehensive liability insurance and for the purchase, operation, maintenance, repair and regular replacement of said automobile. City shall be named as an "additional-insured" on any such comprehensive liability insurance policy, and such policy shall cover both professional and personal use of the automobile. Manager shall provide to City proof of such insurance and the endorsement naming the City as an "additional insured."

(e) **IRC §457 Plan.** Effective March 26, 2012 City shall contribute Three Thousand Nine Hundred Dollars (\$3,900.00) per year, in equal monthly installments, to the IRC §457 plan on Manager's behalf.

(f) **Supplemental Benefits.** Except as provided otherwise herein, Manager shall receive any and all other supplemental benefits including, but not limited to, vacation, sick leave, administrative leave, holiday pay, health, dental, life insurance, disability insurance, retirement benefits (PERS), physical examination, and tuition reimbursement, as are generally available to management employees of the City as provided by applicable City Resolutions and Personnel Rules. Except as otherwise provided herein, all actions undertaken by City relating to supplemental benefits for management employees of the City shall be considered actions affecting the same benefits applicable to Manager.

Manager shall receive a monthly cell phone/technology allowance of Eighty Dollars (\$80.00) and will be responsible for providing his own cell phone. Manager shall also receive an annual allowance of Five Hundred Dollars (\$500.00) to be used toward health club membership and other health related expenses.



City shall not at any time during the Term of this Agreement reduce the Base Salary, compensation or other employment benefits of Manager, except as permitted by this Agreement.

**5. PROFESSIONAL DEVELOPMENT, OUTSIDE PROFESSIONAL ACTIVITIES AND GENERAL EXPENSES**

**(a) Professional Development.**

(i) Subject to the Council's discretion to adopt and amend the budget, City agrees to pay for professional dues and subscriptions on behalf of Manager which are reasonably necessary, as determined by the Council, for the Manager's continuation and full participation in national, regional, state or local associations and organizations necessary and desirable for Manager's continued professional participation, growth and advancement, or for the good of the City. Furthermore, City shall pay for any additional professional dues and subscriptions as may be approved by the Council from time to time. Manager shall provide to Council a current list of such professional and subscriptions, and shall periodically update the list to keep it current.

(ii) Subject to the Council's discretion to adopt and amend the budget, City agrees to pay the travel and subsistence expenses of Manager for official travel, meetings and events reasonably necessary to continue the professional development of Manager and reasonably necessary to fulfill official and other functions for the City, all as determined to be reasonable and necessary by the Council. Such meetings and events shall include, but not be limited to, the annual International City Management Association meeting, meetings of the League of California Cities and other national, regional, state and local conferences of governmental groups and committees in which Manager serves as a member.

**(b) Outside Professional Activities.** Manager agrees to remain in the exclusive employ of the City of Arcadia while employed by the City of Arcadia. The term "employed" however, shall not be construed to prohibit occasional teaching, writing, speaking or consulting performed by Manager on his time off, even if outside compensation is provided for such services. Said activities are expressly allowed, provided that in no case is any activity allowed which would present a conflict of interest with, or detriment to, the City of Arcadia. In the event overnight travel is required for such non-City related business, the City Council shall be notified in advance. De minimis use of City equipment for such purposes is hereby authorized.

**(c) General Expenses.** City recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by the Manager, including participation in civic and other local organizations, and hereby agrees to reimburse or pay said general expenses if reasonably incurred.



Subject to the Council's discretion to adopt and amend the budget, the City Treasurer (or other designated employee) is hereby authorized to disburse funds as needed to fulfill all provisions of this Agreement upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

Subject to the Council's discretion to adopt and amend the budget, City will provide all equipment necessary for the completion of Manager's duties. This equipment shall include, but not be limited to, computers and other electronic devices deemed appropriate by Manager. City acknowledges and approves that certain personal use of this equipment may take place. Said equipment provided hereunder shall remain the property of the City and shall be returned to the City, along with all other City property in the possession of Manager, upon termination of employment.

City shall bear full cost of any fidelity or other bonds required of Manager under any law or ordinance.

## **6. PERFORMANCE EVALUATION**

(a) The Council and Manager may annually define such goals and objectives for the City which they determine necessary for the proper operation of the City in the attainment of the Council's policy objectives, and the Council and Manager may further establish a priority among those various goals and objectives to be reduced to writing. The process of considering the establishment and priority of goals and objectives of the City shall be conducted and completed generally about January of each year.

(b) The Council, following informal and nonbinding consultation with Manager, shall periodically establish goals and objectives regarding the performance of Manager. The Council shall review and evaluate the performance of Manager at least once annually, generally about January of each year. Notwithstanding any term or provision of this Agreement to the contrary, Manager shall serve at the will and pleasure of the Council, and the Council shall be entitled to terminate the employment of Manager without cause.

(c) In recognition of the accomplishment of goals and objectives and excellent performance, a merit increase in Base Salary and/or benefits of Manager may be granted to Manager by the Council. Nothing herein shall be deemed to change the "at will" employment status of Manager.

## **7. TERMS OF EMPLOYMENT**

The Council, following informal and nonbinding consultation with Manager, may by motion, resolution or written amendment to this Agreement approved as an official Council meeting agenda item, fix any other terms and conditions of employment as it may determine, from time to time, relating to the performance of Manager, provided such terms and conditions are not prohibited by the provisions of this Agreement, the Arcadia City Charter or any other rules or regulations of the City.

## **8. CONFLICT OF INTEREST PROHIBITION**

It is understood and agreed that because of the duties of Manager within and on behalf of the City of Arcadia and its citizenry, Manager shall not, during the Term of this Agreement, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Arcadia, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the City Council. For and during the Term of this Agreement, Manager further agrees, except for a personal residence or residential property acquired or held for future use as his personal residence, not to invest in any other real estate or property improvements within the corporate limits of the City of Arcadia without the prior consent of the City Council.

## **9. ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties concerning the subject matter set forth herein and no promise, representation, warranty or covenant not included in this Agreement has been or is relied upon by any party hereto concerning the offer and acceptance of employment described herein.

## **10. NO CONTINUING WAIVER**

No waiver of any term or condition of this Agreement by either party shall be deemed a continuing waiver of such term or condition.

## **11. EFFECTIVE DATE AND TERM**

The Effective Date of this Agreement shall be March 26, 2012. Subject to City's right to terminate Manager's employment at any time, the Term of this Agreement is three (3) years from the Effective Date, and shall automatically renew itself for successive twelve (12) month periods unless City notifies Manager of its intent to terminate this Agreement at least twelve (12) months prior to the end of its three (3) year Term or any successive twelve (12) month Term.

## **12. INDEMNIFICATION**

City shall defend, hold harmless and indemnify Manager against any claim, demand or other legal action as required by applicable law.

## **13. SEVERABILITY**

In the event that any provision of this Agreement is held or determined to be illegal, invalid or void by reason of any final, non-appealable judgment, order, or decision of a court having jurisdiction over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be illegal, invalid or void are wholly inseparable from the remaining portion of the Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first set forth hereinabove.

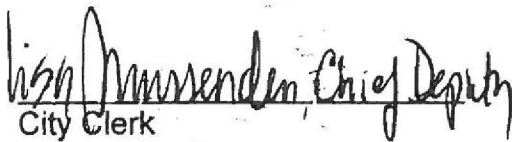
**CITY:**

  
Mayor of the City of Arcadia

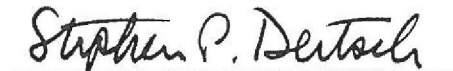
**MANAGER:**

  
Dominic Lazzaretto

**ATTEST:**

  
City Clerk  
City of Arcadia

**APPROVED AS TO FORM:**

  
Stephen P. Deitsch  
City Attorney